

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

SAVANNAH COLLEGE OF ART AND
DESIGN, INC.,

Plaintiff,

CASE No. C-1-02-490

vs.

Judge Beckwith

PHILIPPE HOUeix,

Magistrate Hogan

Defendant.

**DEFENDANT'S ATTORNEY'S
AFFIDAVIT CONTRA TO
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

STATE OF OHIO] COUNTY OF HAMILTON] ss:

Being duly cautioned that the penalties for perjury could apply and being sworn, the undersigned, John A. Rebel, states the following to be true to his personal knowledge.

1. The web pages *scad.info* and *scad-and-us.info* are linked to a webpage labeled WORLD STUDENT at www.worldstudent.com/uk/mag/features/accreditation.shtml, a copy is attached.

2. The undersigned has used three Internet Service Providers. Each provider has a homepage, that contains a prominent "search" button. Alternate search engine may be selected. A key term is typed in a box and a "go" button is hit. Pages of search results appear. The reasonable Internet user will follow this procedure.

3. Attached hereto are search results using the key term *scad*. The popular search engines used were: MSN, Google, Yahoo, HotBot, and AskJeeves.

4. For the MSN search engine, the No. 1. *SCAD* site is System and Control Archive at Dallas, *scad.utdallas.edu*. The No. 2 site is Plaintiff at *scad.edu*. The No. 14. site is an older art college: Seian College of Art and Design. (At some sites it is called Seian University of Art and

Design). It is in Japan. Its web addresses is *scad.ac.jp*. At No. 28 is one of Defendant's websites; *scad-and-us.info*.

5. For the Google search engine, the No. 1. *SCAD* site is Plaintiff at *scad.edu*. The No. 10. site is Seian College of Art and Design. (At some sites it is called Seian University of Art and Design). It is in Japan, *scad.ac.jp*. Defendant's website is not in the first forty.

6. For the Yahoo search engine, the No. 1. *SCAD* site is Plaintiff at *scad.edu*. The No. 3. site is System and Control Archive at Dallas, *scad.utdallas.edu*. The No. 2 site is Plaintiff at *scad.edu*. The No. 7. site is Seian College of Art and Design. Defendant's website is not in the first sixty hits.

7. For the HotBot search engine, the No. 2. *SCAD* site is Plaintiff at *scad.edu*. The Nos 1 and. 3. sites are the European Database and Europa SCADPlus, *europa.eu.int/scad* and *europa.eu.int/scadplus*. The No. 13. site is Seian College of Art and Design. Defendant's website is No. 29.

8. For the AskJeeves search engine, the No. 1. *SCAD* site is Plaintiff at *scad.edu*. Seian College of Art and Design and Defendant's website are not in the first forty hits.

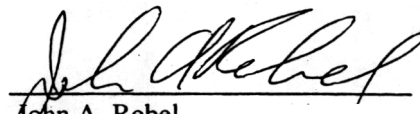
9. The website *scad.com* connects to *southcarolina.com*. Its homepage is attached hereto. The website *scad.org* connects to *smithcad.org*: for Smith County Appraisal District in Texas. Its homepage is attached hereto. The website *scad.com.au* connects to Schmidli Creation And Design.

10. A few of the homepages for *SCAD* websites found by the search engines are attached. Attached hereto other homepages of *SCAD* including *SCAD* at Dartmouth, which is loosely affiliated with the famous school. Attached hereto is the page for *SCAD* at Princeton, *princeton.edu/scad*.

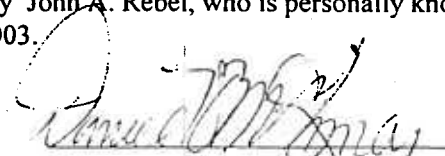
11 Attached hereto are the U.S. Patent and Trademark Office (USPTO) registration and applications records under *SCAD*. Accordia, Inc. applied for use of *SCAD* in the international classes 009 and 042 on 2/20/2001, application number 78099537. International class 009 is "scientific, nautical, surveying, electric, photographic, cinematographic, optical, weighing, measuring, signaling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; automatic vending machines and mechanisms for coin operated apparatus; cash registers, calculating machines, data processing equipment and computers; fire extinguishing apparatus". Plaintiff's class is International class 0041: "Education; providing of training; entertainment; sporting and cultural activities". Accordia, Inc. other protected area is International class 0042: "Providing of scientific and industrial research; computer programming; services that cannot be classified in other classes".

12. There are nine other entries under *SCAD* in the USPTO record.

13. The undersigned on two occasions used the Google search engine to determine the number of United States colleges and universities listed at the TLDN of *.edu*, *.com*, *.info*, and *.org*. At *.edu* there are approximately 1,850 U. S. colleges(over 1000) and universities(about 850) listed. At *.com* there are less than 10 colleges and 0 universities. At *.org* and *.info* there are no colleges and no universities; so that 99.5% of all U.S. colleges and universities have web sites at *.edu*.


John A. Rebel

The foregoing affidavit was sworn to and signed before me by John A. Rebel, who is personally known to me, the undersigned notary, on this day of January 2003.


Notary

Tab

Serial Number: 75502576

Registration Number: 2570532

Word Mark: SCAD BEES

International Class: 041

U.S. Class: 100 101 107

Goods and Services: educational services, namely, providing courses of instruction at the college level and distributing course material in connection therewith; arranging and conducting a sports and athletic program in conjunction with educational activities as a college; DATE OF FIRST USE: 1990.00.00; DATE OF FIRST USE IN COMMERCE: 1990.00.00

Mark Drawing Code: (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code: 03.23.06; 03.23.24

Filing Date: 19980615

Published for Opposition: 19991228

Registration Date: 20020521

Owner Name: (REGISTRANT) SAVANNAH COLLEGE OF ART AND DESIGN, INC.

Owner Address: 516 Abercorn Street Savannah GEORGIA 31401 CORPORATION
Corporation GEORGIA

Type of Mark: SERVICE MARK

Register: PRINCIPAL

USAMark Vol. ID: USM00154

Live / Dead: REGISTERED

Serial Number: 78105974

Word Mark: SCAD

International Class: 041

U.S. Class: 100 101 107

Goods and Services: Education services, namely providing instruction and training at the undergraduate, graduate and post-graduate levels.; DATE OF FIRST USE: 1979.00.00; DATE OF FIRST USE IN COMMERCE: 1979.00.00

Mark Drawing Code: (1) TYPED DRAWING

Filing Date: 20020131

Owner Name: (APPLICANT) Savannah College of Art & Design, Inc., The

Owner Address: 15 Drayton Street Savannah GEORGIA 31401 CORPORATION
Corporation GEORGIA

Type of Mark: SERVICE MARK

Register: PRINCIPAL

Attorney: Benjamin R. Gross

Live / Dead: PENDING

Serial Number: 78099537

Word Mark: SCAD

International Class: 009

U.S. Class: 021 023 026 036 038

Goods and Services: computer software, namely, supply chain management software, and manuals supplied therewith

International Class: 042

U.S. Class: 100 101

Goods and Services: consulting services in the field of supply chain business processes; computer services namely, computer software design, production, training, updating and integration services

Mark Drawing Code: (1) TYPED DRAWING

Filing Date: 20011220

Owner Name: (APPLICANT) Accordia, Inc.

Owner Address: 34347 Maybird Circle, Fremont, CALIFORNIA 94555 CORPORATION
Corporation DELAWARE

Type of Mark: TRADEMARK; SERVICE MARK

Section 1(b) Indicator: SECTION 1 (B)

Attorney: Connie L. Ellerbach, Esq.,

Live / Dead: PENDING

Serial Number: 76056856

Word Mark: SCADASERVER HOST

International Class: 009

U.S. Class: 021 023 026 036 038

Goods and Services: computer software for use in connecting computers, data acquisition, process control and monitoring systems

Mark Drawing Code: (1) TYPED DRAWING

Filing Date: 20000525

Priority Date: 20000208

Pseudo Mark: SCAD A SERVER HOST

Owner Name: (APPLICANT) Control Microsystems Inc./Microsystemes de Controle Inc.

Owner Address: 28 Steacie Drive Kanata, Ontario CANADA K2K 2A9 CORPORATION
Corporation CANADA

Type of Mark: TRADEMARK

Register: PRINCIPAL

Section 1(b) Indicator: SECTION 1 (B)

Section 44 Indicator: SECT 44

Attorney: Paul Fields

Live / Dead: PENDING

Serial Number: 76056855

Word Mark: SCADASERVER REMOTE

International Class: 009

U.S. Class: 021 023 026 036 038

Goods and Services: computer software for use in connecting computers, data acquisition, process control and monitoring systems

Mark Drawing Code: (1) TYPED DRAWING

Filing Date: 20000525

Priority Date: 20000208

Pseudo Mark: SCAD A SERVER REMOTE

Owner Name: (APPLICANT) Control Microsystems Inc./Microsystemes de Controle Inc.

Owner Address: 28 Steacie Drive Kanata, Ontario CANADA K2K2A9 CORPORATION
Corporation CANADA

Type of Mark: TRADEMARK

Register: PRINCIPAL

Section 1(b) Indicator: SECTION 1 (B)

Attorney: Paul Fields

Live / Dead: PENDING

Serial Number: 76056854

Word Mark: SCADASERVER

International Class: 009

U.S. Class: 021 023 026 036 038

Goods and Services: Computer software for use in connecting computers, data acquisition, process control and monitoring systems

Mark Drawing Code: (1) TYPED DRAWING

Filing Date: 20000525

Priority Date: 20000208

Pseudo Mark: SCAD A SERVER

Owner Name: (APPLICANT) Control Microsystems Inc./Microsystemes de Controle Inc.

Owner Address: 28 Steacie Drive Kanata, Ontario CANADA K2K 2A9 CORPORATION
Corporation CANADA

Register: PRINCIPAL

Section 1(b) Indicator: SECTION 1 (B)

Section 44 Indicator: SECT 44

Attorney: Paul Fields

Live / Dead: PENDING

Serial Number: 75915497

Word Mark: SCADALERT

International Class: 009

U.S. Class: 021 023 026 036 038

Goods and Services: electronic process alarm

Mark Drawing Code: (1) TYPED DRAWING

Filing Date: 20000202

Abandonment Date: 20010228

Cancellation Date: 00000000

Pseudo Mark: SCAD ALERT

Owner Name: (APPLICANT) Dranetz-BMI

Owner Address: 2000 Powell, #1200 Emeryville CALIFORNIA 94608 CORPORATION
Corporation CALIFORNIA

Type of Mark: TRADEMARK

Register: PRINCIPAL

Section 1(b) Indicator: SECTION 1 (B)

Status: ABANDONED - FAILURE TO RESPOND

Live / Dead: DEAD

Serial Number: 74493583

Word Mark: SCAD

International Class: (ABANDONED) 009

U.S. Class: 038

Goods and Services: computer software in the field of structural engineering

Mark Drawing Code: (1) TYPED DRAWING

Filing Date: 19940224

Published for Opposition: 19941129

Abandonment Date: 19960822

Cancellation Date: 00000000

Owner Name: (APPLICANT) Hi-Draw Software Ltd.

Owner Address: 32 Bloch St. Tel Aviv, 64161 ISRAEL CORPORATION
ISRAEL

Corporation

Owner Name: (LAST LISTED OWNER) Hi-Draw Software Ltd.

Owner Address: 32 Bloch St. Tel Aviv, 64161 ISRAEL CORPORATION
ISRAEL

Corporation

Type of Mark: TRADEMARK

Register: PRINCIPAL

Section 1(b) Indicator: SECTION 1 (B)

Attorney: Richard Franklin

Status: ABANDONED - NO STATEMENT OF USE FILED

Live / Dead: DEAD

Serial Number: 73152007

Registration Number: 1143970

Word Mark: SCAD

International Class: (CANCELLED) 009

U.S. Class: 023 026

Goods and Services: Fire Detectors and Actuators for Use with Pneumatically Actuated Fire Suppression
Apparatus; DATE OF FIRST USE: 1977.09.12; DATE OF FIRST USE IN COMMERCE:
1977.09.19

Filing Date: 19771214

Published for Opposition: 19800729

Registration Date: 19801223

Abandonment Date: 00000000

Cancellation Date: 19870508

Owner Name: (REGISTRANT) Ansul Company, The

Owner Address: Marinette WISCONSIN 54143 CORPORATION

Corporation DELAWARE

Type of Mark: TRADEMARK

Register: PRINCIPAL

Attorney: Morgan, Finnegan, Pine, Foley & Lee

USAMark Vol. ID: USM00071

Status: CANCELLED - SECTION 8

Live / Dead: DEAD
